

1 THE HONORABLE JOHN C. COUGHENOUR

2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CITY OF SEATTLE,

11 Plaintiff,

12 v.

13 ZYLAB NORTH AMERICA, LLC,

14 Defendant.

CASE NO. C17-0790-JCC

PROTECTIVE ORDER

15 This matter comes before the Court on the parties' stipulated motion for protective order
16 (Dkt. No. 47). Having thoroughly considered the stipulation, the Court ORDERS the following:

17
18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or
20 private information for which special protection may be warranted. Accordingly, the parties hereby
21 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
22 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
23 protection on all disclosures or responses to discovery, the protection it affords from public
24 disclosure and use extends only to the limited information or items that are entitled to confidential
25 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
26 confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged in the above-captioned matter which include any of the
4 following information: ZyLAB customer identities; ZyLAB pricing terms, lists and structures;
5 ZyLAB technology processes, techniques, and specifications; ZyLAB methodologies, procedures
6 and practices; and ZyLAB contractual terms, conditions and covenants. “Confidential” material
7 shall also include documents and tangible things produced or otherwise exchanged in the above-
8 captioned matter which include any of the following information, as referenced in RCW 42.56.070,
9 RCW 42.56.420 and WAC 44-14-06002: City personal information in agency employee files, to
10 the extent that disclosure would violate the employee’s right to privacy; preliminary drafts, notes,
11 recommendations, and intra-agency memorandums that demonstrate the City’s deliberative
12 process; security information related to public safety, national security, emergency plans,
13 emergency preparedness plans, escape response plans, safe school plans, computer and
14 telecommunications network infrastructure, and the personal security information of private cloud
15 servers; and sensitive proprietary information of businesses regulated by the City.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material; (2) all
19 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
20 conversations, or presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information that is in
22 the public domain or becomes part of the public domain through trial or otherwise.

23 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

24 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
25 or produced by another party or by a non-party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the

1 categories of persons and under the conditions described in this agreement. Confidential material
2 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
3 that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the designating party, a receiving party may disclose any
6 confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
12 designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary for this
14 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of
17 confidential material, provided that counsel for the party retaining the copy or imaging service
18 instructs the service not to disclose any confidential material to third parties and to immediately
19 return all originals and copies of any confidential material;

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
24 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this agreement;
26

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or
4 referencing such material in court filings, the filing party shall confer with the designating party
5 to determine whether the designating party will remove the confidential designation, whether the
6 document can be redacted, or whether a motion to seal or stipulation and proposed order is
7 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
8 that will be applied when a party seeks permission from the court to file material under seal.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
11 or non-party that designates information or items for protection under this agreement must take
12 care to limit any such designation to specific material that qualifies under the appropriate
13 standards. The designating party must designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify, so that other portions of the
15 material, documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
19 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
20 and burdens on other parties) expose the designating party to sanctions.

21 If it comes to a designating party's attention that information or items that it designated for
22 protection do not qualify for protection, the designating party must promptly notify all other parties
23 that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
26

1 ordered, disclosure or discovery material that qualifies for protection under this agreement must
2 be clearly so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
5 the designating party must affix the word “CONFIDENTIAL” to each page that contains
6 confidential material. If only a portion or portions of the material on a page qualifies for protection,
7 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins).

9 (b) Testimony given in deposition or in other pretrial proceedings: the parties
10 and any participating non-parties must identify on the record, during the deposition or other pretrial
11 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
12 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
13 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
14 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
15 at trial, the issue should be addressed during the pre-trial conference.

16 (c) Other tangible items: the producing party must affix in a prominent place
17 on the exterior of the container or containers in which the information or item is stored the word
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
19 the producing party, to the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the designating party’s
22 right to secure protection under this agreement for such material. Upon timely correction of a
23 designation, the receiving party must make reasonable efforts to ensure that the material is treated
24 in accordance with the provisions of this agreement.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS
26

1 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
4 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
5 challenge a confidentiality designation by electing not to mount a challenge promptly after the
6 original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
8 regarding confidential designations without court involvement. Any motion regarding confidential
9 designations or for a protective order must include a certification, in the motion or in a declaration
10 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
11 affected parties in an effort to resolve the dispute without court action. The certification must list
12 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
13 to-face meeting or a telephone conference.

14 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
15 intervention, the designating party may file and serve a motion to retain confidentiality under Local
16 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
17 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
18 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
19 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
20 the material in question as confidential until the court rules on the challenge.

21 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
22 LITIGATION

23 If a party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
25 must:
26

1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by
7 the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
10 material to any person or in any circumstance not authorized under this agreement, the receiving
11 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
12 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
13 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
14 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
15 Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 MATERIAL

18 The parties will produce documents pursuant to the Stipulation Regarding Production
19 Specifications Convention, attached hereto as Exhibit B. When a producing party gives notice to
20 receiving parties that certain inadvertently produced material is subject to a claim of privilege or
21 other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil
22 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
23 established in an e-discovery order or agreement that provides for production without prior
24 privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d)
25 as set forth herein.

26 10. NON TERMINATION AND RETURN OF DOCUMENTS

1 Within 60 days after the termination of this action, including all appeals, each receiving
2 party must return all confidential material to the producing party, including all copies, extracts and
3 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

4 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
5 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
6 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
7 product, even if such materials contain confidential material.

8 The confidentiality obligations imposed by this agreement shall remain in effect until a
9 designating party agrees otherwise in writing or a court orders otherwise.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 Date: October 10, 2017

FOSTER PEPPER PLLC

s/ Jack Cullen

Jack Cullen, WSBA #7330

jc@foster.com

1111 Third Avenue, Suite 3000

Seattle, WA 98101

Phone: (206) 447-4689

Fax: (206) 749-2001

17 Date: October 4, 2017

JEFFER MANGELS BUTLER & MITCHELL LLP

s/ Joseph N. Demko

Joseph N. Demko

jdemko@jmbm.com

s/ Matthew S. Kenefick

Matthew S. Kenefick

mkenefick@jmbm.com

Two Embarcadero Center, 5th Floor

San Francisco, California 94111-3813

Phone (415) 398-8080

Fax (415) 398-5584

Admitted pro hac vice

Attorneys for ZyLAB North America, LLC

1
2 Date: October 5, 2017

PETER S. HOLMES
Seattle City Attorney

3
4 s/ John. L. Groh (by email consent)

John L. Groh, WSBA #18440
Assistant City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 233-2169
Email: John.Groh@seattle.gov

8
9 Date: October 5, 2017

K&L GATES LLP

10 s/ Martha Rodriguez Lopez (by email consent)

Martha Rodriguez Lopez, WSBA #35466

11 s/ Raina V. Wagner (by email consent)

Raina V. Wagner, WSBA #45701
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Phone: (206) 370-7882
Fax: (206)370-6080
Email: martha.rodriquez-lopez@klgates.com
Email: raina.wagner@klgates.com
Attorneys for The City of Seattle

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
4 in any other court, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

7
8 DATED this 13th day of October 2017.

9
10
11 

12 John C. Coughenour
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on _____
7 in the case of *City of Seattle v. Zylab North America, LLC*, Case No. 2:17-cv-00790-JCC. I agree
8 to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____
20
21
22
23
24
25
26

EXHIBIT B

STIPULATION REGARDING PRODUCTION SPECIFICATIONS CONVENTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26